

Productivity Commission Review of the Australian Consumer Product Safety System

Victorian Government Submission

October 2005

Executive Summary

The Victorian Government welcomes the opportunity to make a submission to the Productivity Commission's Review of the Australian Consumer Product Safety System. This submission will address and provide information on a number of the key preliminary findings in the Productivity Commission Draft Discussion Paper to further inform the review.

General Safety Provision

A GSP is a general law that would create an explicit legal obligation for businesses to market only 'safe' (or not 'unsafe') products. Under a GSP, action could be taken against a producer/supplier if it was determined that a product was unsafe, irrespective of any accident, injury or loss having been caused by the product.

The Victorian Government considers that a GSP introduced in isolation is unlikely to provide an effective solution for weaknesses identified in the Australian Consumer Product Safety System. Notwithstanding this, Victoria considers that introducing a GSP may be a valuable tool to make other targeted areas of product safety reform, such as harmonisation of the Australian product safety system, easier to achieve.

International experience with the GSP has shown that in certain cases, in order to forcibly remove dangerous goods from the marketplace, agencies have discovered the need to implement prescriptive standards and product specific bans. As a result, in addition to the introduction of a GSP, it is likely that significant institutional reforms will still be required to target specific problem areas.

Therefore, the cost of implementation is a significant issue in determining the value of introducing a GSP, particularly given that targeted reforms are likely to still be necessary in order to make the GSP an improvement on the current product safety system.

It is important that the Productivity Commission considers the GSP within the context of the broader range of reforms to product safety.

Harmonise legislation, administration and enforcement

Mandatory Standards and Bans

The Victorian Government supports in principle that the national bans and standards process should be harmonised and standards and bans should be adopted on a national basis. However, the Productivity Commission should consider the institutional mechanisms for approving bans and standards, given that MCCA's role is to provide strategic guidance on consumer affairs issues.

The Victorian Government proposes the establishment of a National Assessment Committee for determining mandatory standards and bans. The Victorian Government recommends that a process is established where the Commonwealth, States and Territories propose a new standard or ban to the Committee; the Committee assesses the proposal and provides a recommendation. A recommendation by the Committee in support of a standard or ban should then be implemented on a national basis by all jurisdictions.

Extensions to temporary bans should be available in special circumstances.

Where an Australian standard is not in place, an international standard should be adopted where possible.

Harmonising Legislation

The Victorian Government agrees in principle with the proposal for jurisdictions to agree on a core set of principles in regard to product safety legislation, although Victoria considers that the costs and difficulties that differences in State and Territory legislation cause are not substantial.

The process to achieve legislative harmony, or at minimum, agreement on a core set of principles, should be considered. Achieving agreement on a core set of principles would require that some States and Territories either expand or narrow provisions in their product safety legislation, and there may be a lack of consensus on making changes to State and Territory legislation. Therefore, establishing a process to ensure consensus can be achieved is important.

Definition of ‘unsafe’ products

Victoria supports the inclusion of foreseeable misuse in the definition of unsafe.

Revision to coverage of services and second hand goods

Victorian Legislation covers both services and second-hand goods.

The Victorian Government considers that limiting the coverage of legislation in relation to services is unnecessarily restrictive, as there is potential for a service to be dangerous, even if the products used are safe.

The Victorian Government considers that consumers have the right to a basic level of safety in regard to the services they receive, and the legislation should provide protection for consumers in all trade or commerce, including services.

The growing online trade in second-hand goods, through, for example, online auctions such as E-bay, is an issue that would benefit from further consideration and research to determine the effectiveness of existing protections for consumers.

Provision of Information

The Victorian Government would continue to use the Consumer Affairs Victoria website as a channel to provide product safety information, even with the establishment of a national internet based ‘one stop shop’.

The Victorian Government considers that a ‘one stop shop’ is unlikely to reduce costs to business to an extent to justify the costs of establishing and maintaining the site. Alternatively, ensuring that each jurisdiction’s product safety website has current links to all Commonwealth, State and Territory product safety information would minimise the amount of time and effort required to access all available product safety information in Australia.

As greater harmonisation occurs, areas of difference will diminish, reducing over time arguments supporting a ‘one stop shop’.

Requirements to monitor and report

The Victorian Government supports a requirement for business to report goods or services that have been the subject of successful liability claims or out-of-court settlements.

Early Warning System and Cross Jurisdictional Collection of Consumer Complaints

The Victorian Government considers that a national database could improve the information sharing between the jurisdictions, and make the data that is held by each jurisdiction more valuable by collating it into a bigger dataset.

Guidelines defining the type, amount and format of information required for a national database are essential to ensure a smooth transition to better aligned data collection and reporting.

In addition to linking Commonwealth, State, Territory and international data in the database, the Victorian Government considers that links with organisations such as the Monash University Accident Research Centre should also be established.

Product Safety Research

The need for better quality data on the incidence and cost of product related injuries is recognised and supported by the Victorian Government.

The Victorian Government supports an expansion of the product safety research program in Australia. The Victorian Government considers that a co-ordinated national research program would improve the efficiency of research, as it would avoid duplication between Commonwealth, State and Territory research activity, and resources could be used more efficiently for research projects that have broad national relevance.

Making Further Progress

This Victorian Government supports the need for further progress in the areas of:

- More evidence based approaches to hazard identification, risk assessment and management
- Targeting recalcitrant and ‘fly by night’ suppliers
- Reducing inconsistencies between Australian and international standards
- e-commerce

These areas are also a priority for the Victorian Government, and steps are being taken in Victoria to address these issues.

Background

In 2004, the Ministerial Council of Consumer Affairs initiated a review of the Australian Consumer Product Safety System with the release of a discussion paper. The review is considering the content and administration of Australia's product safety laws, as well as the manner in which governments can best facilitate the involvement of businesses and consumers in achieving product safety outcomes.

In March 2005, the Commonwealth Treasury commissioned the Productivity Commission to assist MCCA in the review of the Australian consumer product safety system. The Commission was asked to examine the benefits and costs of the existing system as well as the options for reform to the system proposed in the MCCA discussion paper.

In August 2005 the Commission released a draft discussion paper, which contained their initial findings on the operation of the existing product safety system, and proposed options for reform.

In the discussion paper, the Commission estimated that about 45 to 65 deaths a year, and between 364 and 1027 serious injuries, may be directly caused by faults in consumer products. Tentative estimates indicate over 700 deaths and between 30 000 and 90 000 serious consumer product injuries each year could result from the behaviour of the user.

The paper noted that a strong case exists for harmonising legislation across jurisdictions, requiring national approval and implementation of bans and standards, and enhanced mechanisms for the early detection of unsafe products. The Commission also sees merit in the following reforms to the current system:

- Include 'foreseeable misuse' in the definition of 'unsafe', as long as it is limited to behaviour which is reasonably predictable and not unreasonable;
- Ensure consistent coverage of services relating to the installation and maintenance of consumer products;
- Provide better information to businesses on regulatory requirements and targeted information campaigns to consumers, where effective and efficient;
- Make evidence-based hazard identification and risk management central to policy making, standard setting and enforcement; and
- Make greater use of cost-benefit analysis, embodying risk assessment, in determining whether and how to intervene to address identified product hazards.

The Commission also recommended some important improvements to the product safety system, including:

- Influencing consumer behaviour with targeted information campaigns
- Improving data collection and research to better inform decisions
- Identifying delayed onset injuries associated with products (i.e. asbestos)
- Targeting enforcement activity on businesses most likely to supply unsafe products.

The Commission is welcoming further feedback on the preliminary findings contained in the draft report.

Introduction

The Victorian Government recognises the need for broad national reform for Australia. The Victorian Government is a strong supporter of the need for a new wave of national reform that builds the competitiveness of our businesses and strong economy, with a new focus on building a healthy, skilled and motivated population, and governments and the community to work in harmony to achieve these outcomes.

The Victorian Government's vision is for a Victoria where consumers act with confidence and where communities are protected. We aim to protect and promote the interests of consumers, particularly the vulnerable and disadvantaged, and do so in the context of making markets work better.

One of the Victorian Government's important functions is to protect consumers from the risk of injury or death caused by products or services that are dangerous or fail to meet prescribed standards. The *Fair Trading Act 1999* provides the power for the Director of Consumer Affairs Victoria to receive and investigate enquiries and complaints, enforce provisions, and educate and inform consumers and business. The Act provides for:

- warnings to be issued about unsafe products
- information and product safety standards to be promulgated
- measures to remove unsafe products from the marketplace
- prevention of the supply of unsafe products
- persons supplying unsafe products to be prosecuted

The *Fair Trading Act* defines a dangerous product as one that is "*likely to cause death or serious injury to the body or health of any person, whether directly or indirectly*". The *Fair Trading Act* provides the power to intervene in the market place to restrict or remove unsafe products from the market.

Consumer Affairs Victoria have taken a multi faceted approach to product safety to ensure that enforcement activity is complemented by more preventative measures including education and information provision and the development of product safety and information standards. An effective compliance regime must be based on a comprehensive program that addresses information provision, detection and risk based prioritisation and effective enforcement.

Product safety activity is applied throughout the product supply chain, including product development, sale, and also use. Safety standards and bans are actively enforced with manufacturers, importers and retailers through surveying the market, responding to complaints and acting promptly against offending suppliers.

In 2004-2005, Consumer Affairs Victoria received 1831 enquiries from consumers and industry seeking advice on matters relating mainly to the safe use and design of consumer products, and carried out 164 investigations into allegations of unsafe products. Consumer Affairs Victoria also led the nation in the number of banned consumer products seized. Nearly 50,000 product units were seized from suppliers' premises because they contravened ban orders and regulations prohibiting the sale of these goods, which could cause serious injury or death.

Targeting areas of high product safety risk is a priority for the Victorian Government, and this includes targeting enforcement activity at recalcitrant suppliers, ensuring that vulnerable consumers, such as children, are afforded a high level of protection in regards to product safety and addressing issues relating to safe product use. In 2004-2005, 19 warning letters were sent to retailers and 24 companies signed enforceable undertakings, many of these being discount and \$2 stores.

In 2004-05, Consumer Affairs Victoria successfully prosecuted five suppliers for supplying goods subject to a permanent ban order. Consumer Affairs Victorian took Supreme Court action against SJS Imports Pty Ltd and its proprietors after Consumer Affairs Victoria inspectors uncovered 3,457 permanently banned children's toys and 4,678 dangerous cigarette lighters during a raid on the company's premises. The Supreme Court ordered SJS Imports Pty Ltd to refrain from supplying goods banned by Consumer Affairs Victoria, and was ordered to put in place a compliance program to ensure that goods they propose to supply in future comply with all applicable ban orders. The company was also ordered to publish a public safety notice in the Herald Sun newspapers.

Education and information provision is an important element of Victoria's product safety program. The Victorian Government produces a range of publications aimed at both consumers and industry. These publications include:

- Toy safety checklist
- Supplying safe cots – facts for traders
- Bunk bed safety
- Product hazard booklet

The Victorian Government notes that the Productivity Commission's estimate of the number of deaths in Australia associated with consumer products, directly or indirectly, is over 700 per year. This is a large and troubling number, yet there appears to be relatively little community awareness or understanding of the extent of this problem. The Commission's draft and final report, and subsequent decisions made by the Ministerial Council of Consumer Affairs, will be important in bringing issues associated with product safety to the forefront of community awareness.

1. General Safety Provision (GSP)

Productivity Commission Preliminary Findings

- 1.1 The Commission remains to be convinced that the likely benefits of a GSP justify the costs involved. A particular concern is that the GSP may fail to target the areas of biggest risk and may deliver little benefit beyond what might be achieved with appropriate modifications to the existing consumer product safety regime (as discussed in this report).
- 1.2 If MCCA were to favour a GSP, it would be preferable to adopt definitions and standards of safety that are consistent with the Product Liability provisions of Part VA of the Trade Practices Act — in order to minimise compliance and administration costs (including transition costs).

A GSP is a general law that would create an explicit legal obligation for businesses to market only ‘safe’ (or not ‘unsafe’) products. Under a GSP, action could be taken against a producer/supplier if it was determined that a product was unsafe, irrespective of any accident, injury or loss having been caused by the product.

Under the current system, a person who is injured, or whose property is damaged, by a defective product has a right to compensation by the manufacturer of the product under Part VA of the Trade Practices Act. Individuals can bring actions. The ACCC can also bring representative actions on behalf of one or more persons. The Victorian *Fair Trading Act* also has provisions to ban, recall or regulate ‘dangerous goods’ where the good is likely to cause death or serious injury to the body or health of any person, whether directly or indirectly.

The Discussion Draft indicated that the Productivity Commission did not consider that net benefits would flow from the introduction of a GSP, and may fail to address the areas of biggest risk, including recalcitrant traders and misuse by consumers.

A GSP, introduced in isolation, is unlikely to provide an effective solution for weaknesses identified in the Australian Consumer Product Safety System. Notwithstanding this, Victoria considers that introducing a GSP may be a valuable tool to make other targeted areas of product safety reform, such as harmonisation of the Australian product safety system, easier to achieve.

A GSP has the benefit of making a clear and nationally unified statement of intent for the Australian Consumer Product Safety System. A GSP makes a clear statement of business’ responsibility to supply only safe products to consumers, which is consistent with the underlying objectives of the current product safety system. While recognising that a GSP on its own is unlikely to remedy all the existing weaknesses of the product safety system, the GSP’s clear and unified statement of intent may make product safety objectives more explicit and the product safety system more robust.

It is argued that the combination of existing product safety regulation and product liability laws provide similar incentives for business to provide safe products as a GSP would. A GSP may, however, place a greater onus on business to supply only safe products, and potentially reduce the burden on consumers to ensure they use products safely, and as intended. The GSP may

provide greater protection for consumers from unsafe products, but as a result, there may be less incentive for consumers to exert caution in choosing and using products. This should be viewed in light of the Commission's estimate that over 90% of deaths related to consumer products are not directly caused by faults with the products, but relate to the behaviour of the product user. The role and incentives for consumers under a GSP may be an issue for further consideration.

Nonetheless, enforcement is easier to carry out when compliance can be measured against prescriptive standards or statements. International experience with the GSP has shown that in order to forcibly remove dangerous goods from the marketplace, agencies have discovered the need to implement prescriptive standards and product specific bans.

One of the reasons for the use of prescriptive standards and bans has been due to the definition of 'safe' under the GSP being not easily proven as part of a product risk assessment. International evidence has indicated that a GSP may not be successful in controlling problems such as 'fly by night' sales and unsafe imports. The evidence suggests that in addition to the introduction of a GSP, significant reform of the current institutional arrangements for product safety regulation will still be required to target specific problem areas, and enforce the GSP, in order to make the GSP effective.

The cost of implementation is a significant issue in determining the value of introducing a GSP, particularly given that targeted reforms are likely to still be necessary in order to make the GSP an improvement on the current product safety system.

It should also be noted that a majority of the 50,000 product units seized by Consumer Affairs Victoria in 2004-05 displayed the European Unions "CE" mark. The "CE" mark indicates that the product has complied with the European Union General Product Safety Directive (the GSP). This example demonstrates that some products that would satisfy a European GSP would fail the current product safety system in Victoria, and possibly other Australian jurisdictions.

Summary of Key Points

- The Victorian Government considers that a GSP introduced in isolation is unlikely to provide an effective solution for weaknesses identified in the Australian Consumer Product Safety System. Notwithstanding this, Victoria considers that introducing a GSP may be a valuable tool to make other targeted areas of product safety reform, such as harmonisation of the Australian product safety system, easier to achieve.
- International experience with the GSP has shown that in certain cases, in order to forcibly remove dangerous goods from the marketplace, agencies have discovered the need to implement prescriptive standards and product specific bans. As a result, in addition to the introduction of a GSP, it is likely that significant institutional reforms will still be required to target specific problem areas.
- Therefore, the cost of implementation is a significant issue in determining the value of introducing a GSP, particularly given that targeted reforms are likely to still be necessary in order to make the GSP an improvement on the current product safety system.
- It is important that the Productivity Commission considers the GSP within the context of the broader range of reforms to product safety

2. Harmonise legislation, administration and enforcement

Productivity Commission Preliminary Findings

- 2.1 The establishment of identical product safety legislation (through arrangements where all changes to legislation in one jurisdiction would be adopted by all others) would deliver net benefits. However, if establishing these arrangements proves unattainable, jurisdictions should, at least, agree on a core set of uniform provisions to be incorporated in all product safety legislation. At a minimum, this core should include the harmonisation of:
- The scope of any coverage of services;
 - Pre-conditions for the imposition of bans and mandatory standards;
 - Mandatory recall powers; requirements to notify authorities of voluntary recalls;
 - Length of interim bans; and
 - Appeal processes.
- 2.2 The Commission considers that permanent bans should only be adopted on a national basis. To achieve this, the process for banning goods should be more closely integrated with the temporary exemption process. This would see the following procedure apply:
- When a jurisdiction introduces a ban it should automatically activate a temporary exemption under the Mutual Recognition Agreement and the Trans-Tasman Mutual Recognition Arrangement;
 - The jurisdiction, or jurisdictions, introducing the ban should then report to the Ministerial Council on Consumer Affairs (MCCA), with a project plan for seeking consensus for a harmonised approach to the question of a national standard or ban;
 - A time limit of 120 days would apply to the temporary exemption;
 - If a permanent ban is agreed to (using the existing two-thirds voting rule) then all jurisdictions would implement the ban by the end of the 120 days;
 - If MCCA agrees to develop a national mandatory standard (using the same voting rule) then the temporary exemption could be extended while the standard is developed; and
 - If no agreement is reached within 120 days the temporary ban would lapse or if some jurisdictions wished to continue the measure they would have to seek a permanent exemption from the Heads of Government.
- 2.3 The Commission considers that mandatory standards should only be adopted on a national basis. To achieve this, mandatory standards should only be implemented using the referral process under the Mutual Recognition Agreement or following a MCCA decision on an interim ban. The referral process should be modified so that an initial decision on whether a mandatory standard should be developed is made within 120 days of a matter being referred to MCCA.

The Victorian Government supports in principle the proposed move towards a more harmonised product safety system. Improved harmonisation in product safety legislation, administration and

enforcement has been attempted in the past, and the difficulties of achieving harmonisation, and the practicalities of a national ban or standard approval process should not be understated.

Product safety enforcement, information and education activity in Victoria requires that a degree of flexibility be retained, even in a harmonised system. This is necessary in order to allow product safety risks in the Victorian marketplace requiring a rapid response to be addressed in a timely manner. The argument for harmonisation is stronger in the area of bans and regulations than in more general product safety activity.

Mandatory standards

The Productivity Commission's proposed national standards model, including the proposed timelines, are supported in principle, although the practical and process related issues require further consideration. For harmonisation to be successful, it is important that procedures are established that will enable faster national action than is currently achieved through MCCA.

Jurisdictions have varying processes for determining the need for standards, including different standards of proof required for establishing the need for regulation. State and Territory initiated standards may lead to disjointed timing and implementation of standards across jurisdictions, and may also lead to variances in standards in each jurisdiction, due to the requirements of the State based regulation processes.

Victorian legislation requires that a Regulatory Impact Statement (RIS) is prepared for any new regulations that are made. The Victorian Competition and Efficiency Commission (VCEC) is responsible for assessing all RIS's for adequacy, and VCEC have very stringent criteria in regard to the content and quality requirements that RIS's must meet in order to obtain endorsement. Other jurisdictions have different requirements and standards for RIS's, and in some cases, the variance in RIS standards may lead to difficulties in obtaining VCEC endorsement of national regulations in Victoria in some cases.

In order to avoid these problems, the Victorian Government proposes the establishment of a National Assessment Committee for determining mandatory standards. The Victorian Government recommends that a process is established where the Commonwealth, States and Territories propose a new standard to the Committee; the Committee assesses the proposal and provides a recommendation. A recommendation by the Committee in support of a standard should then be implemented on a national basis by all jurisdictions.

A National Assessment Committee could make recommendations to MCCA for standards or bans, or alternatively, this decision making power could also rest with the Committee. States and Territories would maintain responsibility for implementing the bans through their own product safety legislation.

In determining the most appropriate model for allocating decision making powers, the underlying rationale for the application of bans is a key consideration. The purpose of bans, and their appropriate use, as part of a technical, risk based process should be considered in determining whether decision making powers should be retained by MCCA.

Other considerations include the appointment of a secretariat, the composition of the Committee and which jurisdiction would be most appropriate to administer the functions of the Committee.

Given the increasingly global nature of the market for many goods and services, international standards are becoming increasingly important. Therefore, where an Australian standards is not

in place, an international standard should be adopted where possible, based on a similar process as for Australian standards.

The Victorian Government's level of support for this option is also dependant on the transitional arrangements that are put in place for moving to a national system. Victoria would support a model whereby all States and Territories adopt Commonwealth standards in addition to their own existing standards. Victoria would be less supportive of a model where Commonwealth standards are adopted nationally, but existing State based standards would be removed.

Permanent bans

In Victoria, bans are more commonly used than regulations or standards in addressing product safety issues. The benefit of a ban is that it allows quick action to be taken to remove a product identified as 'dangerous' from the marketplace.

The Victorian Government agrees in principle that the bans process should be harmonised and permanent bans adopted on a national basis; however the Productivity Commission should consider the institutional mechanism for approving bans, and allow greater flexibility in timelines, particularly for temporary bans.

MCCA's role is to provide strategic guidance on consumer affairs issues. MCCA's area of responsibility is broad, meetings are held infrequently and there is already a considerable volume of out of session material that goes to MCCA Ministers for consideration and decision. Adding national bans to MCCA's area of responsibility will add to the existing volume of out of session material, and may cause delays in the process and result in national bans not being given the necessary priority.

The Victorian Government proposes that a National Assessment Committee, as proposed for determining mandatory standards, is also adopted for determining bans.

The Victorian Government agrees in principle with the proposed process for adopting permanent bans, and agrees that 120 days is a reasonable length of time to achieve agreement. However, the ban process should retain a degree of flexibility to allow Ministers to extend temporary bans for an additional 120 days in special circumstances. This would be similar to the process for regulations, which allows extensions to regulations.

Identical product safety legislation

The Victorian Government agrees in principle with the proposal for each jurisdiction to agree on a core set of principles in regard to product safety legislation. However, Victoria notes that there is little evidence that differences between State and Territory legislation cause substantial problems.

The product safety legislation in each Australian jurisdiction has the same underlying objectives, which are to ensure that products on the market are safe, and to protect consumers from the risks of product related harm. Businesses that are concerned with safety, and aim to ensure the safety of the products they supply, are unlikely to encounter an increase in costs due to minor differences in State and Territory legislation, as they are likely to be achieving safety outcomes that would satisfy the product safety objectives of all jurisdictions.

Achieving greater consistency on a core set of uniform provisions may strengthen the product safety objectives that States and Territories are aiming to achieve, and may go some way to achieving what a GSP would by presenting a consistent and uniform message to business in regard to what is and isn't considered acceptable in regard to product safety.

The process to achieve legislative harmony, or at minimum, agreement on a core set of provisions, should be considered. Achieving agreement on a core set of provisions would require that some States and Territories either expand or narrow provisions in their product safety legislation. There may be a lack of consensus on making changes to State and Territory legislation, and therefore, a process that will lead States and Territories to a point of agreement is important to the success of achieving legislative harmonisation.

Summary of Key Points

- The Victorian Government supports in principle that the national bans and standards process should be harmonised and bans and standards should be adopted on a national basis. However, the Productivity Commission should consider the institutional mechanisms for approving bans and standards, given that MCCA's role is to provide strategic guidance on consumer affairs issues.
- The Victorian Government proposes the establishment of a National Assessment Committee for determining mandatory standards and bans. The Victorian Government recommends that a process is established where the Commonwealth, States and Territories propose a new standard or ban to the Committee; the Committee assesses the proposal and provides a recommendation. A recommendation by the Committee in support of a standard or ban should then be implemented on a national basis by all jurisdictions.
- Extensions to temporary bans should be available in special circumstances.
- Where an Australian standards is not in place, an international standard should be adopted where possible
- The Victorian Government agrees in principle with the proposal for each jurisdiction to agree on a core set of principles in regard to product safety legislation, although Victoria notes that there is little evidence that differences between State and Territory legislation cause substantial problems.
- The process to achieve legislative harmony, or at minimum, agreement on a core set of principles, should be considered. Achieving agreement on a core set of principles would require that some jurisdictions either expand or narrow provisions in their product safety legislation, and there may be a lack of consensus on making changes to State and Territory legislation. Therefore, establishing a process to ensure consensus can be achieved is important.

3. Definition of 'unsafe' products

Productivity Commission Preliminary Findings
3.1 On a preliminary analysis, the Commission is of the view that foreseeable misuse should be explicitly covered in the definition of 'unsafe', where the misuse of the product is not unreasonable.

Victoria supports the Commission's proposal to include foreseeable misuse in the definition of unsafe. Under this proposal, goods that may cause harm because of the way they are used could be recalled or banned.

To some degree, Victorian legislation already captures foreseeable misuse in its definition of dangerous goods. The Victorian *Fair Trading Act* defines a dangerous product as one that is "likely to cause death or serious injury to the body or health of any person, whether directly or indirectly". This definition allows action to be taken against products that may be safe for their intended purpose, but may be harmful when used in a way that is unintended by the producer but is reasonably foreseeable.

In Victoria only the *Fair Trading (Safety Standard) (Children's Toys) Regulations 2004* explicitly covers foreseeable misuse, with a requirement that a foreseeable abuse test be done for children's toys. A small child is not capable of making judgements in regard to how a toy should be used safely, and as such, should not be expected to bear the risk for the safe use of a product. Therefore, in this case, it is important producers bear a greater degree of responsibility for ensuring that the product is safe for use in all foreseeable scenarios.

The issue of foreseeable misuse highlights the behavioural factors that contribute to product harm in Australia and the role that education and information also play in ensuring consumer protection from product related harm.

Summary of Key Points

- Victoria supports the Commission's proposal to include foreseeable misuse in the definition of unsafe.

Revision to coverage of services and second hand goods

Productivity Commission Preliminary Findings

- 3.2 An extension of the consumer product safety provisions to cover all services cannot be justified. There may be benefit, however, in consistent national coverage of services related to the installation and maintenance of consumer products. This would require an extension of the coverage of the consumer product safety provisions in some jurisdictions and in others a narrowing of the scope of their provisions.
- 3.3 In relation to second-hand goods, uncertainty for business and consumers should be reduced by clarifying that such goods (sold in trade or commerce) are covered by governments' existing powers to enforce product safety regulations. This could be achieved most cost-effectively through an agreed intergovernmental policy statement. There is a strong argument for a case-by-case approach to enforcement of product safety laws as they relate to second-hand goods.

In Victoria, neither services nor second hand goods are excluded from existing legislation, but the Productivity Commission has pointed out that there is lack of clarity surrounding the application of the law.

Coverage of services

The Productivity Commission's draft recommendation to cover services related to the installation and maintenance of consumer products would be a narrowing of the Victorian *Fair Trading Act* which covers all services. Limiting the coverage of legislation in relation to services is unnecessarily restrictive, as there is potential for a service to be dangerous, even if the products used are safe.

The Productivity Commission suggested that there was insufficient data to show evidence of a problem in relation to services. The Victorian Government considers that consumers have the right to a basic level of safety in regard to the services they receive, and the legislation should provide protection for consumers in all trade or commerce, including services.

The Victorian Government considers that there is insufficient evidence to support limiting the coverage of the legislation for services and would not support a narrowing of the definition at this stage.

Second-hand goods

The Fair Trading Act covers the sale of second-hand goods sold in trade or commerce. However, a large portion of second-hand goods are sold through channels such as the Trading Post and private sales. These transactions are not captured by the Fair Trading Act, but they still represent a risk to the community through the trade of faulty and dangerous goods.

Consumer Affairs Victoria has been at the forefront of reviewing the impact of e-commerce on fair trading. Consumer Affairs Victoria recently reviewed the rise of online auction sites.

The growing online trade in second-hand goods, through, for example, online auctions such as E-bay, is an issue that would benefit from further consideration and research to determine the effectiveness of existing protections for consumers. In particular, services such as E-bay blur the line between on-off sales and ongoing businesses captured by the 'in trade or commerce' clause which bring transactions within the scope of the Victorian *Fair Trading Act*.

The expanding second-hand goods market highlights the importance of targeting the users of products with programs and information to ensure the purchase of safe products, and also the safe use of products. The benefits of an information campaign aimed at consumers regarding the purchase and use of second-hand goods should be considered as part of a broader strategy aimed at addressing the risks in this market.

Summary of Key Points

- Victorian Legislation covers both services and second-hand goods.
- The Victorian Government considers that limiting the coverage of legislation in relation to services is unnecessarily restrictive, as there is potential for a service to be dangerous, even if the products used are safe.
- The Victorian Government considers that consumers have the right to a basic level of safety in regard to the services they receive, and the legislation should provide protection for consumers in all trade or commerce, including services.
- The growing online trade in second-hand goods, through, for example, online auctions such as E-bay, is an issue that would benefit from further consideration and research to determine the effectiveness of existing protections for consumers.

4. Provision of Information

Productivity Commission Preliminary Findings

- 4.1 A national internet-based one-stop shop focused on providing information about all product safety laws and regulations (including standards and bans) would provide net benefits.
- 4.2 Targeted advertising and education campaigns can improve product safety outcomes but the costs and benefits of each campaign would need to be carefully evaluated.
- 4.3 On balance, the Commission considers that the benefits of a broad ‘Smartrisk’ strategy involving substantial advertising and education activities is unlikely to exceed the costs.

The Victorian Government produces information for business and consumers on a variety of product safety issues. The information produced includes fact sheets, booklets, checklists and guidelines on products including bunk beds, monkey bikes, prams and children’s toys.

In May 2005, the Victorian Government released the Product Hazard Alert booklet. The booklet profiles unsafe banned products and includes a colour picture, description of the product, description of the hazard, and known suppliers of the product. The booklet is a useful resource for importers, wholesalers, retailers and consumers to assist them to avoid supplying and buying banned products.

National internet-based one-stop shop

The Victorian Government currently also publishes all products banned and regulated by Victoria on the Consumer Affairs Victoria website. The Consumer Affairs Victoria website is an important tool for providing product safety information to Victorian consumers and business and provides an online channel to make an enquiry or a complaint. The Consumer Affairs Victoria website receives 75,000 unique visitors a month and is a key resource for consumers and businesses in Victoria.

The Victorian Government would continue to use the Consumer Affairs Victoria website as a channel to provide product safety information, even with the establishment of a national internet based ‘one stop shop’. A ‘one stop shop’ creates a risk of duplication of information between the two sites, as well as extra resources being required to update both sites.

A national website for product safety raises issues regarding how frequently information would be updated, and who would be responsible for providing the information and updating the site. For a national site to be effective, resources would need to be committed to updating the site as soon as new information became available to ensure the currency of information. A ‘one stop shop’ is unlikely to reduce costs to business to an extent to justify the costs of establishing and maintaining the site.

Ensuring that each jurisdiction’s product safety website has current links to all Commonwealth, State and Territory product safety information would minimise the amount of time and effort required to access all available product safety information in Australia. This system will better

ensure that the information that is obtained is current, and it will reduce duplication of information. As greater harmonisation occurs, areas of difference will diminish, reducing over time arguments supporting a 'one stop shop'.

Summary of Key Points

- The Victorian Government would continue to use the Consumer Affairs Victoria website as a channel to provide product safety information, even with the establishment of a national internet based 'one stop shop'.
- The Victorian Government considers that a 'one stop shop' is unlikely to reduce costs to business to an extent to justify the costs of establishing and maintaining the site. Alternatively, ensuring that each jurisdiction's product safety website has current links to all Commonwealth, State and Territory product safety information would minimise the amount of time and effort required to access all available product safety information in Australia.
- As greater harmonisation occurs, areas of difference will diminish, reducing over time arguments supporting a 'one stop shop'.

5. Requirements to monitor and report

Productivity Commission Preliminary Findings

- 5.1 The requirement to report voluntary recalls, where it is mandated, appears to work well. Governments should ensure that voluntary recalls in all jurisdictions are subject to mandatory reporting requirements, and all (voluntary and mandatory) recalls are posted on the Recalls Australia website.
- 5.2 The Commission considers that the reporting of goods which have been the subject of a successful liability claim or multiple out-of-court settlements is justified. Further, encouraging businesses to clarify how consumers and retailers can notify them of unsafe or faulty products may improve the flow of information about potentially dangerous goods.

Businesses are privy to valuable information including the safety features and risks of the products that they produce, consumer complaints, return of faulty products etc. This information could be highly valuable in detecting and addressing potentially unsafe products on the market.

Currently, this information is not readily available to consumer agencies, except through the reporting requirements of voluntary recalls. The Victorian *Fair Trading Act* gives the Minister for Consumer Affairs the power to recall consumer goods that pose a safety risk to the community, however most recalls are initiated voluntarily by the supplier. If a voluntary recall is issued, the Victorian *Fair Trading Act* requires that the supplier, within two days, give written notice to the Minister for Consumer Affairs that the goods are subject to recall.

Consumer Affairs Victoria currently receives between 6 – 10 voluntary recall notices each day. The number and regularity of voluntary recall notices received suggests that the voluntary recall reporting requirements are working well, although its success in removing dangerous products from the market is unclear. The recall website works well, as it a narrowly targeted website that communicates information that is of national relevance.

The Victorian Government would support a requirement for business to report goods or services that have been the subject of successful liability claims or out-of-court settlements. This option is a good compromise to broader and more onerous business reporting requirements, which could prove costly to both businesses and the Government, where the Government is required to audit and assess all the information provided by businesses. It is also important that careful consideration of the definition and application of the meaning of ‘settlements’ is made.

This recommendation should provide useful information to Government that will assist in directing resources to take proactive steps to address potentially dangerous products, as identified through court cases, or out of court settlements.

Summary of Key Points

- The Victorian Government supports a requirement that business report goods or services that have been the subject of successful liability claims or out-of-court settlements.

6. Early Warning System and Cross Jurisdictional Collection of Consumer Complaints

Productivity Commission Preliminary Findings

- 6.1 The Commission's preliminary assessment is that an extensive early warning system, based on a major upgrade of hospital-based data collection, would result in considerable costs, particularly for government. These costs are likely to outweigh the benefits that may be produced by such a system.
- A stronger case exists for a more broadly-based and improved early warning system. Such a system could be based on limited data collection periods, improved categorisation and coordination of coronial and hospitals admission data, a slight expansion in the number of data reporting hospitals and improved use of consumer complaints information. It should also supplement Australian data with monitoring information from overseas where compatible and report via an established information portal.
- 6.2 A linked system of complaints information that provides easy and timely access for regulators on emerging product hazards would provide net benefits when compared to the current system.
- 6.3 Subject to a more detailed costing, the Commission considers that a combined national system, which incorporates linked complaints data and early warning information on injury, is warranted.

In 2003, MCCA endorsed a framework for seeking national outcomes and enhanced co-ordination of investigation, compliance and enforcement activities. The framework included an agreement to further develop the co-ordination of reporting unsafe products and the exchange of information between jurisdictions.

In 2005, following MCCA endorsement, the web based alert system AUZSHARE was launched. Although the key driver for AUZSHARE was a need to develop more effective information sharing system on scams, interstate fraud and consumer complaints, it does have the capacity to be used more broadly for product safety information sharing.

Consumer Affairs Victoria currently maintains a database of all product safety complaints received and investigations undertaken. The database contains a large amount of information on consumer products including the complaint made against the product, whether the product had caused injury, known suppliers of the product and also the outcomes of any risk assessment or investigations. A national database could improve the information sharing between the jurisdictions, and make the data that is held by each jurisdiction more valuable by collating it into a national dataset.

Clear guidelines defining the type, amount and format of information required for the national database are essential to ensure a smooth transition to better aligned data collection and reporting. Central administration of the database is considered important to ensure the website is functional and easy for jurisdictions to access and update. For the database to be useful, it is important that information is available quickly, to support product safety investigations, and that information is current.

In addition to linking Commonwealth, State, Territory and international data in the database, links should be established with organisations such as the Monash University Accident Research Centre who conduct regular and ongoing hospital data analysis, to use their data and research to support of its early warning capabilities of the database.

Summary of Key Points

- The Victorian Government considers that a national database could improve the information sharing between the jurisdictions, and make the data that is held by each jurisdiction more valuable by collating it into a bigger dataset.
- Clear guidelines defining the type, amount and format of information required for the national database are essential to ensure a smooth transition to better aligned data collection and reporting.
- In addition to linking Commonwealth, State, Territory and international data in the database, the Victorian Government considers that links with organisations such as the Monash University Accident Research Centre should also be established.

7. Product Safety Research

Productivity Commission Preliminary Findings

- 7.1 The provision of better quality data on the incidence and cost of product-related injuries would deliver benefits to government in guiding regulatory activity and to consumers in potentially reducing the number of deaths and injuries via improved hazard identification and risk analysis.
- 7.2 The Commission remains to be convinced that a significantly expanded program of supporting research, in relation to consumer product safety, would be cost effective. The costs of such research may be considerable and would primarily be borne by government. Such a program is likely to result in limited net benefits.
- 7.3 The Commission sees value in a limited increase in research in this area, initially focusing on a one-off baseline study of the current incidence and costs of product-related accidents and the roles played in such accidents by product fault and consumer behaviour

Better quality data

The need for better quality data on the incidence and cost of product related injuries is recognised and supported by the Victorian Government. It is understood that improvements in data will support evidence based policy and program development in the area of product safety and assist in developing better estimates of the costs and incidence of product related injury. This will support a more efficient allocation of resources to product safety activity.

Expanded research program

The Victorian Government supports an expansion of the product safety research program in Australia, and would support the proposed initial baseline study of the current incidence and costs of product-related accidents and the roles played in such accidents by product fault and consumer behaviour.

There are a number of considerations regarding who would co-ordinate or undertake the research, how the terms of reference would be decided on and how it would be funded. These will be ongoing questions should the research program be expanded in the future.

Research programs in the past, including the Nursery Furniture Injury Prevention Program, have been successful, and the outcomes of the research valuable for product safety activity. As a result, Victoria considers that there would be benefits in undertaking targeted research into other identified areas of high risk. Victoria consider that a co-ordinated national research program would improve the efficiency of research, as it would avoid duplication between Commonwealth, State and Territory research activity, and resources could be used more efficiently for research projects that have broad national relevance.

The Commission should also note that MCCA recently agreed to establish a co-ordinated national research agenda on consumer issues, which could provide some support to product safety research.

Summary of Key Points

- The need for better quality data on the incidence and cost of product related injuries is recognised and supported by the Victorian Government.
- The Victorian Government supports an expansion of the product safety research program in Australia. The Victorian Government considers that a co-ordinated national research program would improve the efficiency of research, as it would avoid duplication between Commonwealth, State and Territory research activity, and resources could be used more efficiently for research projects that have broad national relevance.

8. Making Further Progress

Productivity Commission Preliminary Findings

- 8.1 There needs to be a stronger focus on achieving a genuinely evidence-based approach to hazard identification, and risk analysis and management. Further, this evidence-based approach needs to flow through to the development of mandatory product standards. At a minimum, only those provisions of a standard specifically dealing with hazard reduction should be mandated, while other design features could be deemed to be only voluntary.
- 8.2 Consistent with a focus on hazard identification and risk management, it is important that regulators are strategic about how they allocate the limited resources available for enforcement activities. From this perspective, factors to consider include: targeting the activities of recalcitrant and fly-by-night suppliers which are less influenced by concerns about their reputation and the threat of being sued; achieving an appropriate balance between deterrence and persuasion; and setting penalties that have a deterrence effect.
- 8.3 Any future changes to Australia's consumer product safety system should have consideration for the global nature of consumer product markets and Australia's international obligations to ensure that product standards do not create unnecessary barriers to trade. There should be a stronger focus on systematically reducing inconsistencies between Australian and international standards where this is appropriate.
- 8.4 Governments should consider the particular challenges posed by e-commerce (if any) in relation to consumer product safety. There is a need to ensure that Australia's consumer product safety system is realistic about what can be achieved, given the likely growth of e-commerce, and has the ability to respond to the challenges identified.

Evidence-based approach to hazard identification, and risk analysis and management.

Product Safety inspectors in Victoria adopt a standard products risk assessment process. A range of evidence from various sources is used in product risk assessments including MUARC accident and injury data and coronial data.

In order to move towards a more evidence based approach in the area of product safety, improvements in the quality and availability of data are important corresponding activities. The Victorian Government takes an active role in working towards making existing data more useful, including providing feedback on the current Law Reform Committee Inquiry into the Coroners Act, recommending improvements to the quality and accessibility of coronial data for product safety purposes.

Targeting the activities of recalcitrant and fly-by-night suppliers

Suppliers who persistently breach product safety laws are of concern to the Victorian Government, and a broad range of measures are adopted in enforcing compliance with product safety regulation.

The Victorian Government undertakes active market monitoring through product safety inspectors, and also other officers on the ground, such as Trade Measurement inspectors. In 2004-2005, Consumer Affairs Victoria inspected 317 businesses as part of the market monitoring program, and inspected 130 toy suppliers' premises as part the annual pre-Christmas toy survey.

Product safety compliance and enforcement activity is not just limited to retailers. The Victorian Government works with participants throughout the product supply chain to achieve good product safety outcomes. In 2004-2005, 19 warning letters were sent to retailers following store inspections as part of marketplace monitoring program and 24 companies signed enforceable undertakings, many of these being discount and '\$2 stores'. Over 50,000 products were seized in 2004- 2005, and five suppliers were successfully prosecuted for supplying goods subject to a permanent ban order.

In 2004-05, Consumer Affairs Victoria took Supreme Court action against SJS Imports Pty Ltd and its proprietors after Consumer Affairs Victoria inspectors uncovered 3,457 permanently banned children's toys and 4,678 dangerous cigarette lighters during a raid on the company's premises. The Supreme Court ordered SJS Imports Pty Ltd to refrain from supplying goods banned by Consumer Affairs Victoria, and was ordered to put in place a compliance program to ensure that goods they propose to supply in future comply with all applicable ban orders. The company was also ordered to publish a public safety notice in the Herald Sun newspaper.

Reducing inconsistencies between Australian and international standards

The Victorian Government is represented on a number of committees developing or reviewing Australian or joint Australian and New Zealand Standards for particular groups of products. Membership on these committees requires that the Victorian Government comment on draft standards from the International Organisation for Standardisation (ISO) and vote on the adoption of existing internationally recognised ISO standards.

This work is becoming increasingly important as there is a growing trend to align Australian and international standards.

E-commerce

Victoria currently chairs the Standing Committee on Consumer Affairs working group on e-commerce. E-commerce is an area where there is a high risk for consumer exploitation and consumer loss and the online trading of second hand goods is a large and growing area of trade where product safety risks that have yet to be captured.

Internet based transactions poses a problem for consumer agencies as they often by-pass the traditional outlets including shop fronts, and there is a greater potential for bypassing national laws and standards. Consumer Affairs Victoria had success in tracing the location of an importer of monkey bikes that were sold online, although the difficulties of tracing the importer of products traded online should not be understated.

The challenges posed by the growth in e-commerce demonstrates the importance of establishing working relationships with international product safety agencies and customs and the limitations in targeting product safety programs only at the supply side of the market. It highlights the need

for campaigns targeted explicitly at consumers where access to suppliers is not necessarily achievable.

The trade in e-commerce, and its implications for product safety, is an issue that requires further consideration and analysis.

Summary of Key Points

- This Victorian Government supports the need for further progress in the areas of:
 - More evidence based approaches to hazard identification, risk assessment and management
 - Targeting recalcitrant and ‘fly by night’ suppliers
 - Reducing inconsistencies between Australian and international standards
 - e-commerce
- These areas are also a priority for the Victorian Government, and steps are being taken in Victoria to address these issues.